IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11412 of 2004

Between:
State Bank of India, Chilkaluripet, Guntur.
..... PETITIONER

AND

1 Commissioner of police & Competent Authority under APP DFE Act, Vijayawada City,Krishna Dist.
2 Channumolu Krishna Kumari, W/o.Narasimha Rao, Kasturi purnachandra Nagar, Fatameta, Vijayawada, Krishna Dist.
3 Spl.Court under APPDFE Act, No.17/99-cum-Metropolitan Sessions Judge-cum-II Addl.Dist.Sessions Judge, Vijayawada.
.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction in nature of writ of mandamus declaring the docket order dt.12-5-04 returning the petition E.A. /04 filed by the petitioner in Crl.M.P.1044/02 on the file of special court under APPDFE Act (Act 17/99) cum Metropolitan sessions Judge-cum-II Addl. Dist. Sessions Judge, Vijayawada as illegal, consequently directing the 3rd respondent to receive and entertain E.A. /04 filed on 16-04-04 in Crl.M.P.1044/02 on the file of 3rd respondent and dispose it off on merits in accordance with law and pass.

For the Petitioner: MRS.P.BALA RANI, Advocate

For the Respondents: MR.C.V.NAGARJUNA REDDY , Advocate

The Court made the following ORDER:

This writ petition is filed by the petitioner – Bank aggrieved by the action of the third respondent, which refused to receive the application filed by the petitioner seeking to raise attachment of the properties, which were attached under the provisions of A.P. Protection of Depositors of Financial Establishment Act, 1999 (for short 'the Act').

2. According to the petitioner, the property that was attached under the above said Act was mortgaged to the petitioner–Bank. Therefore, the petitioner has got a first charge over the property. In the light of the said mortgage in favour of the petitioner, the authorities under the above said Act, cannot attach the property in question. Therefore, the petitioner sought to make an application before the third respondent-Court. The third respondent, without entertaining the application and deciding the issue on merit, returned the very application with a docket entry that the attachment was made absolute on an application made by the competent authority, therefore, the present application is not maintainable. The said stand of the third respondent is clearly illegal and not in accordance with law.

3. The present petitioner, who is claiming to have a charge over the property was not a party to the proceedings and therefore, the orders if any, passed are not binding on the petitioner, therefore, the present application of the petitioner, which is in the nature of claim application, has to be entertained and appropriate orders have to be passed on merit. But, it is not open to the third respondent - Court to reject the application even from receiving it, numbering it and considering the same on merits.

4. Under the above circumstances, the docket order dated

12.05.2004 is set aside and the third respondent is directed to receive the application of the petitioner and consider the same on merits and pass appropriate orders in accordance with law.

5. The writ petition is accordingly disposed of with the above directions. No costs.

-

07.07.2004

Note: Furnish Copy by tomorrow
B/o
va

To
1 The Commissioner of police & Competent Authority under APP DFE Act, Vijayawada City,Krishna Dist.
2 Spl.Court under APPDFE Act, No.17/99-cum-Metropolitan Sessions Judge-cum-II Addl.Dist.Sessions Judge, Vijayawada.
3 Two CD Copies.